

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

PRELIMINARY AND DETENTION HEARING
BEFORE THE HONORABLE DAVID COUNTS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE
By: Ms. Kerry Fleck
400 West Illinois, Suite 1200
Midland, Texas 79701

For the Defendant: LAW OFFICES OF ROY SCOTT
By: Mr. Damian Castillo
407 N. Big Spring, Suite 200
Midland, Texas 79701

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 INDEX
2

3 WITNESSES FOR	Direct	Cross	Redirect	Recross
4 THE PLAINTIFF				
5 Agent Santana	3	12	19	
6 WITNESSES FOR				
7 THE DEFENDANT				
8 Proffer of Testimony	25			
9				
10 EXHIBITS:			Offered	Received
11 (None offered)				
12				
13 ARGUMENT:				
14 By Ms. Fleck				27
15				
16 RESPONSE:				
17 By Mr. Castillo				30
18				
19				
20 RULING OF THE COURT:				36
21	*****			
22				
23				
24				
25				

THE COURT: The Court will call U.S. versus
John Christopher Brunson, MO-09-M-239.

Announcement for the Government?

MS. FLECK: Kerry Fleck on behalf of the Government.

THE COURT: Thank you, Ms. Fleck.

MR. CASTILLO: Damian Castillo on behalf of Mr. Brunson, your Honor. We're present and ready.

THE COURT: Thank you, Mr. Castillo.

Ms. Fleck, please call your first witness.

MS. FLECK: The Government calls Agent

Santana.

THE COURT: Agent Santana, if you'll approach, please.

(Witness sworn by the Courtroom Deputy.)

COURTROOM DEPUTY: State and spell your name for the record.

THE WITNESS: Juanita Santana, S-A-N-T-A-N-A.

DIRECT EXAMINATION

BY MS. FLECK:

Q. And how are you employed?

A. I'm a criminal investigator, senior special agent, with Immigration and Customs Enforcement.

Q. How long have you been a law enforcement officer?

A. Over 20 years.

1 Q. And it's my understanding that you were involved
2 in the investigation that led to the arrest of John
3 Christopher Brunson; is that correct?

4 A. Yes, ma'am.

5 Q. And Mr. Brunson was arrested by you and your
6 fellow agents on September 11th of this year?

7 A. That's correct.

8 Q. Can you tell this Court how you first became
9 aware of some illegal activities on the part of
10 Mr. Brunson?

11 A. On August 31st, approximately 5:30 in the
12 afternoon, I received a lead from Jesse Miller; he's a
13 special agent with ICE in Vancouver, British Columbia;
14 he's assigned to the Office of International Affairs.
15 He contacted me because, in turn, he had received
16 a lead from the Royal Canadian Mounted Police, where
17 they had received a complaint from a subject by the
18 name of Alan Clark. Mr. Clark had been on a Yahoo
19 chatroom, and contacted Chris Howell. Chris Howell
20 requested Mr. Clark to go into a private room where
21 the conversation became sexual in nature.

22 Q. Now, this individual that Mr. Clark identified
23 to the Canadian police as Chris Howell, was that name
24 given in the chatroom either as a user name or a name
25 that was given by this individual? Is that right?

1 A. It's the name that reflects in the chat log, yes.

2 Q. Now, once Mr. Clark began talking to this person
3 who represented themselves as Mr. Howell, what
4 concerned him to the point where he decided to go to
5 law enforcement?

6 A. Mr. Howell advised Mr. Clark that he was getting
7 ready to engage in sexual acts with his three-year-old
8 daughter, that she was running around in the
9 background. Mr. Clark could see the child running
10 around in the -- through the webcam image. And he was
11 very concerned because Mr. Brunson, at the time acting
12 as Mr. Howell, advised him that he was getting ready
13 to get naughty with her, that he was getting ready to
14 initiate oral sex with the child.

15 Q. Did he describe -- Did this person describe --
16 identifying himself as Mr. Howell, describe to
17 Mr. Clark what type of act he was going to perform
18 with his three-year-old child?

19 A. Yes.

20 Q. And what did he say?

21 A. Mr. Howell, Brunson, told Mr. Clark that he was
22 getting ready to get naughty with her, to engage in
23 sexual acts, that he was going to get her to suck his
24 private parts.

25 Q. So, he was indicating -- Mr. Howell, we'll call

1 him for now, was indicating that he was going to get
2 the three-year-old child to perform oral sex on him;
3 is that correct?

4 A. That's correct.

5 Q. And you mentioned that Mr. Clark told the police
6 that he could actually see a child that appeared to be
7 a three-year-old child running around in the
8 background because they were talking to each other
9 through a webcam; is that right?

10 A. That's correct.

11 Q. Okay. Now, once this information was relayed to
12 the Canadian police and to the ICE agents in Canada,
13 how did it track back to you here in Midland?

14 A. The Royal Canadian Mounted Police has a unit of
15 intelligence analysts that work these type of cases.
16 And they researched the name "Chris Howell" through
17 different sources, open sources, and they located a
18 Chris Howell with several profiles on social
19 networking sites, Yahoo, Stickem (phonetic), Myspace,
20 Any Webcam (phonetic), and other adult spaces, as
21 well.

22 Q. And were they able to identify an individual
23 through these sources, named Chris Howell, that lived
24 in the Midland/Odessa area?

25 A. Yes. Chris Howell identified himself as a

1 33-year-old male, white male, living in Odessa, Texas.

2 Q. And you say he identified himself. Was that
3 through Myspace?

4 A. Yes, ma'am.

5 Q. And were law enforcement officers able to track
6 down this individual named Chris Howell in Odessa,
7 Texas?

8 A. Yes, ma'am.

9 Q. And once they met with Mr. Howell, did they
10 notice, by looking at any pictures, or how did they
11 figure out that this Mr. Howell was not the person who
12 had been speaking to Mr. Clark?

13 A. Of the images that we received from Mr. Clark,
14 there were two photographs of Mr. Howell, of Chris
15 Howell. When we researched the Myspace page for
16 Chris Howell, there's a number of photographs. There
17 are also logos and photographs of the U.S. Army. One
18 of the logos pertains to the Permian Basin Air Soft,
19 which is a team of people that go out and play war
20 games in the desert. When we reached the Permian
21 Basin Air Soft Space page, we found a member by the
22 name of John. John and Chris Howell are one and the
23 same when we compared the photographs; they even had
24 the same typographical errors in their profiles. John
25 and Chris Howell were the same. Chris Howell listed

1 on his "friends" other residents of Odessa, and we
2 visited them that night. And we provided them with
3 photographs and copies of the web pages for Chris
4 Howell, and established that Chris Howell is John
5 Brunson.

6 Q. So, Chris Howell, the actual Chris Howell that
7 you visited in Odessa, when looking at the pictures
8 that Mr. Clark had provided from his chat with,
9 supposedly, Mr. Howell, he identified that person
10 as not him, it's John Brunson; --

11 A. Yes.

12 Q. -- is that correct?

13 A. Yes.

14 Q. Did Mr. Howell indicate how he knew Mr. Brunson?

15 A. Mr. and Mrs. Howell know each other (sic). They
16 have known John Christopher Brunson for many years.
17 As a matter of fact, I believe he attended school with
18 Marie Howell, and dated for a while, like in the 9th
19 grade. So, they have known him for a long, long time.

20 Q. And did the Howells tell you where you could find
21 Mr. Brunson?

22 A. Yes. They gave us instructions on how to get to
23 the residence, gave us a lot of information, what type
24 of vehicle they drove, description of the premises,
25 everything.

1 Q. And based off of this information, in part, did
2 you apply for a search warrant through Judge Counts,
3 and receive one, and execute it the late part of last
4 week or early part of this week?

5 A. On September 3rd, we executed the search warrant.

6 Q. Okay. And can you tell the Court what you found
7 when you executed -- executed the search warrant?

8 A. Well, at the residence we found the exact same
9 room that was depicted in the pictures from the
10 Internet, from the webcam. The same logos, the same
11 patches, the air-conditioner unit in the window, the
12 floor, the desk, the chair, the rolling chair, were
13 all identical. Also, the child was at the residence,
14 the three-year-old child was at the residence. And
15 we recovered several computers, a webcam, digital
16 cameras, other storage media from the house.

17 Q. And just to be clear, can you tell us where --
18 where this house was located?

19 A. The residence is located in northwest Odessa,
20 very remote, in the county.

21 Q. Now, was Agent Heath Hardwick with you and your
22 other fellow agents when you executed the search
23 warrant?

24 A. Yes, ma'am.

25 Q. And is he trained to forensically examine

1 computers and other hardware?

2 A. That's correct.

3 Q. And did he do a preview, what we call a preview,
4 to get sort of a quick glimpse at what is contained on
5 the computers at the residence?

6 A. Once we transported all the items back to the
7 RAC office in Midland, he did the preview, yes.

8 Q. Okay. So, the preview is done at you all's
9 office?

10 A. Yes, ma'am.

11 Q. And what did Agent Hardwick discover when he did
12 this preview?

13 A. He discovered in the laptop, under the file
14 called "John," he discovered three images of the
15 three-year-old child, basically what we consider child
16 pornography.

17 Q. And I know this is uncomfortable, but could you
18 describe what those images depicted?

19 A. The first image, the child is wearing a pink top
20 with white trim on the sleeves and a cartoon character
21 up front; she's not wearing a diaper, she's not
22 wearing any other clothing, and her genital area is
23 exposed. The picture is from the neck down.

24 On the second picture, the image depicts the
25 child laying down flat on the ground, same pink top,

1 no underwear, no PJs, no bottoms, and exposing
2 herself, as well.

3 The image that is very disturbing is when the
4 child is exposing her genitalia to the camera with her
5 hands.

6 Q. And when you say "with her hands," are her legs
7 actually spread and she's using her hands to -- to
8 reveal her genitalia to the camera?

9 A. On that one she's standing up, yes. But she is
10 exposing her genitalia, yes.

11 Q. Okay. Now, these three images were found during
12 the preview, but Agent Hardwick is still in the
13 process of fully examining the computer and other
14 media that was used; is that right?

15 A. That's correct.

16 Q. Through his initial examination, beyond the
17 preview, has he found further photographs that seem
18 to be of this same series that you just described?

19 A. Yes, ma'am.

20 Q. In one of the photographs that he has found
21 within this series, does there depict a male hand,
22 an adult -- what appears to be an adult male hand,
23 assisting the child in spreading her legs and exposing
24 her genitalia to the camera?

25 A. That's correct.

1 Q. Okay. The cameras that were seized from
2 Mr. Brunson's house, were any of those, through your
3 investigation, manufactured in the State of Texas?

4 A. No, ma'am.

5 Q. And the child, the three-year-old child that was
6 depicted in the photographs and at the residence, did
7 CPS remove that child from the home?

8 A. Yes, ma'am.

9 MS. FLECK: I have no further questions at
10 this time, your Honor.

11 THE COURT: Mr. Castillo?

12 MR. CASTILLO: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. CASTILLO:

15 Q. Ms. Santana, you -- you obtained a subpoena from
16 Yahoo; is that correct?

17 A. Agent Jesse Miller did.

18 Q. You served a subpoena on Yahoo?

19 Okay. What information did you obtain from
20 that?

21 A. I received a copy of it from Jesse Miller in
22 Canada. And the subpoena indicates that the user ID
23 is "westexdad," which is John or Chris -- Chris
24 Howell, John, also known as John Brunson, uses
25 "westexdad," 33 years old, out of Odessa.

1 Q. What name came back as registered to that Yahoo
2 account?

3 A. Chris Howell.

4 Q. And did they give you an IP address?

5 A. Yes, they sure did.

6 Q. Do you know if it was a static or dynamic IP
7 address?

8 A. I do not know.

9 Q. It just says it was registered to a Chris
10 Howell?

11 A. Yes, sir.

12 Q. Okay. When you started investigating and --
13 You said that someone spoke to a "Clark"; is that
14 correct?

15 A. Yes.

16 Q. Okay. And this Clark was texting or chatting
17 back and forth --

18 A. He was chatting back and forth.

19 Q. -- with Chris Clark (sic)?

20 A. Yes.

21 Q. Okay. The images that he was seeing, were those
22 live images?

23 A. Yes.

24 Q. Okay. There was no sexual acts being portrayed,
25 was there?

1 A. No, sir.

2 Q. Did he see the face of the person he was chatting
3 with?

4 A. Yes.

5 Q. How did he obtain a picture of that face?

6 A. He explained it to the constables; we have a copy
7 of the interview. It appears that Mr. Clark is pretty
8 savvy with computers. And he was able to obtain
9 digital photos of the video that was being streamlined
10 by Mr. Brunson to him, and it's the picture of
11 Mr. Brunson in his computer room.

12 Q. When -- When you went to visit the Howells'
13 residence, how many people lived there?

14 A. At the Howell residence?

15 Q. Yes.

16 A. We met Mr. and Mrs. Howell and their twins.

17 Q. And how old were the twins?

18 A. Three years old.

19 Q. Did the agents obtain a search warrant for that
20 home, since the name matched with the name on the
21 Yahoo chat?

22 A. No, we did not.

23 Q. Is there a reason for not searching the Howells'
24 residence or -- or considering --

25 A. That was very early. It was in the early stages

1 of the investigation, and we decided to conduct a
2 knock and talk. A decision was made to approach the
3 residence and conduct a knock and talk. It was a low,
4 easy, gentle approach; we knew there were twins,
5 three-year-old twins at the residence. And we just
6 wanted to see who is this person, to see if Jeffrey
7 Mark Howell is Chris Howell or is John Brunson, who
8 this person was.

9 Q. Okay. So, when you saw there was three-year-old
10 children living there, and you saw the Howells, you
11 didn't think it was a good idea, perhaps, to search
12 that home for computers, laptops, pictures?

13 A. We had no reason to search the home for
14 computers.

15 Q. You said that the Howells directed you to
16 Mr. Brunson's residence?

17 A. Yes.

18 Q. So, they obviously knew where he lived?

19 A. Yes.

20 Q. Did the agents ask Mr. Howell whether he'd been
21 over to the Brunsons' residence?

22 A. They told us that he had been there as recent as
23 about a month ago, when he was sick and they went and
24 took him to the doctor.

25 Q. When they arrived at the Brunsons' house, do you

1 know if they asked Mr. Brunson or Mrs. Brunson whether
2 Mr. Howell would regularly come to their house or
3 not?

4 A. You mean during the search warrant?

5 Q. When they arrived at the Brunsons' house, was
6 there any questions asked as to whether the Howells
7 would come over to their home?

8 A. The Howells to the Brunsons?

9 Q. Yes.

10 A. Yes. And they said they visited at least once
11 a month.

12 Q. So, they had somewhat of a relationship with
13 them, enough to --

14 A. Yes, they sure did. Yes.

15 Q. Enough to make visits to their home?

16 A. Yes.

17 Q. You said these three images were obtained from
18 a laptop?

19 A. That's correct.

20 Q. Okay. Would you -- Were the agents able to tell
21 if any of those images had been sent from that laptop
22 across the computer -- across the Internet?

23 A. I do not know at this time, and the -- the
24 examination is still underway.

25 Q. You understand part of this charge is that the

1 **pictures may move across interstate commerce or**
2 **foreign commerce. Do you know if -- if there was any**
3 **sign of anything being passed on?**

4 MS. FLECK: Your Honor, that's actually a
5 misstatement of the law. He hasn't been charged with
6 sending any pictures across state lines.

7 MR. CASTILLO: Well, I believe it's, he
8 knows or has reason to know, under the statute, your
9 Honor.

10 MS. FLECK: We have charged him with using
11 materials that had been manufactured outside of the
12 State of Texas to produce child pornography.

13 THE COURT: Under 2251(b); correct?

14 MS. FLECK: Yes, sir.

15 THE COURT: All right. I'll -- I understand
16 the law. Go ahead.

17 MR. CASTILLO: Okay.

18 **Q. (By Mr. Castillo) You said there was other**
19 **photos obtained from the laptop. Do you know how many**
20 **other photos there were?**

21 **A. Dozens and dozens.**

22 **Q. How many?**

23 **A. There are several dozen photos, yes.**

24 **Q. Dozen?**

25 **A. Yes. There's eight total images reflecting the**

1 child, depicting the child, eight total. And there
2 are other images, --

3 Q. All right.

4 A. -- as well.

5 Q. Real quick, back to the -- the information
6 obtained from Yahoo.

7 A. Uh-huh.

8 Q. There was an IP address obtained?

9 A. Yes.

10 Q. Okay. The IP goes to a particular house. Do you
11 know what house it went to?

12 A. That information was not on the subpoena. That
13 information was not available.

14 Q. It wasn't requested, or it wasn't available?

15 A. In the results, in the subscriber information, it
16 indicates Chris Howell, Odessa, Texas, and his
17 "westexdad" handle.

18 Q. And just so that we understand, both Chris Howell
19 and Mr. Brunson live in Odessa, Texas; is that
20 correct?

21 A. Chris is Mr. Brunson's middle name; his name is
22 John Christopher Brunson. And Howell is his best
23 friend's last name.

24 Q. They both live in Odessa?

25 A. Well, I don't know if there's a Chris Howell that

1 lives in Odessa.

2 Q. The Howells live in Odessa?

3 A. Yes, they do.

4 MR. CASTILLO: Pass the witness.

5 THE COURT: Ms. Fleck?

6 REDIRECT EXAMINATION

7 BY MS. FLECK:

8 Q. And just sort of to clarify that. Mr. Howell,
9 who's Mr. Brunson's best friend, his first name is
10 not Chris; right?

11 A. **Absolutely.**

12 Q. It's Jeffrey?

13 A. Jeffrey Mark.

14 Q. Okay. When you went to the Howells' residence,
15 you had already observed the pictures that were taken
16 as stills from the video or web chat with Mr. Clark, I
17 believe it is, up in Canada?

18 A. Yes, ma'am.

19 Q. So, when you met Mr. Howell, you could see that
20 he was not the person in the chat?

21 A. Actually, before we went to the house we knew he
22 wasn't the person because we researched him and
23 conducted a lot of searches, and one of them was his
24 driver's license photo. We knew that Mr. Howell was
25 not Chris Howell.

1 Q. And the evidence that you were able to review
2 from the Canadian authorities, did some of those
3 pictures depict the three-year-old child that was sort
4 of running around in the background while this chat
5 was going on?

6 A. Yes, ma'am.

7 Q. And when you saw the -- the Howells' twins, were
8 you able to identify that those were not -- either of
9 those twins were not the three-year-old in the video?

10 A. Yes, ma'am.

11 Q. After the child was removed by CPS from the
12 Brunson home, was she taken to Harmony Homes to be
13 interviewed by a forensic interviewer?

14 A. Yes, ma'am.

15 Q. And can you tell the Court about what happened
16 during that interview?

17 A. During that interview, the child was very uneasy
18 every time the interviewer tried closing the door.
19 She would not remain in the room, in the interview
20 room, while the door was closed. She kept on walking
21 back. And that door, you could tell, the handle was
22 pretty strong, and she would bend her little arm and
23 open the door. The interview was conducted, against
24 their policy, with the door open because the child
25 would not remain in the room.

1 She eventually makes it to a drawing table, and
2 is engaged by the interviewer (inaudible). They start
3 coloring, and talking about fish. And her language is
4 very delayed; her language, her -- her skills, her
5 vocabulary is delayed. And she was not interacting
6 well with the interviewer, because she regressed
7 behaviorally and her language skills are not there.

8 Q. And was -- was -- Isn't it true that she was
9 wearing a diaper the entire time from when you saw her
10 during the search warrant through the time she was at
11 Harmony Homes, and even in some of the photographs
12 that were seen on the computers?

13 A. Yes, she wears diapers.

14 Q. And she's three years old; correct?

15 A. Yes, ma'am.

16 Q. Was there a point in time when the forensic
17 interviewer gave her a drawing of sort of an
18 anatomically correct male body, --

19 A. Yes, ma'am.

20 Q. -- and asked -- just sort of presented it to her
21 to see how she would react; is that right?

22 A. Yes.

23 Q. How did the girl react?

24 A. Well, she was coloring with a blue pen, I
25 believe. And she immediately went towards the genital

1 part and scratched it off, really quickly, really
2 quickly scratched it off. She then got another piece
3 of paper and covered that part with another piece of
4 paper. She didn't want anything to do with it. She
5 eventually pushed it off the table behind her. She
6 didn't want to look at it anymore.

7 Q. Now, through your investigation, you were able
8 to discover that Mr. Brunson also has two other
9 daughters, including a 14-year-old daughter who now
10 lives out of state; is that right?

11 A. That's correct.

12 Q. And there was an arrest in the early '90s, I
13 believe it was 1993, where this daughter had alleged
14 some sort of physical or sexual abuse by the hand --
15 at the hand of Mr. Brunson; is that right?

16 A. That's correct.

17 Q. And those were charges that were eventually
18 dropped, as far as you know at this point in time?

19 A. Yes, ma'am.

20 Q. After that allegation, that mother actually won
21 custody of the daughter and moved her out of state; is
22 that right?

23 A. I believe the mother doesn't have custody of
24 the child. The child is of the care, I believe, of
25 a grandmother or a family friend.

1 Q. Okay.

2 A. But she's no longer in the state.

3 Q. Did you receive information -- I know you did
4 some investigation into Mr. Brunson before you
5 executed the search warrant. But did you receive
6 any information, either prior to the execution of the
7 search warrant or during the execution of the search
8 warrant, that led you and your fellow officers to have
9 some concern for your safety?

10 A. Yes.

11 Q. Can you tell the Court about that?

12 A. In our conversations with the Howells, we were
13 warned that Mr. Brunson has an anti-government
14 attitude, an anti-agent attitude, especially against
15 Hispanics or Arabs, and that we wouldn't be welcomed
16 at his residence, basically. And the night that we
17 were intending to serve the search warrant, we were
18 all Hispanic agents. We were a little bit concerned
19 because they told us he has a collection of knives
20 and weapons, and he does have a history for weapons
21 violations in Illinois. So, we were concerned for
22 our safety, and for the safety of his wife and of the
23 child, as well.

24 Q. And once you were in the home, did you see any
25 evidence of this sort of gun collection and

1 anti-Hispanic, racist actions, at all?

2 A. As a matter of fact, in the webcam photo of the
3 child in the background, there's a big black case for,
4 like, a weapon. The computer room was littered with
5 weapons. And, as it turned out to be, they were all
6 weapons used to play simulations and to use for the
7 war games, but they do look real. We also found a set
8 of credentials for a criminal investigator with the
9 CID, with the U.S. Army. It appears as if it's a
10 replica, but it's placed in a badge, in a holder, just
11 like a regular agent credentials would look like.

12 Q. Okay.

13 MS. FLECK: I have no further questions,
14 your Honor.

15 THE COURT: Mr. Castillo?

16 MR. CASTILLO: No more questions, your
17 Honor.

18 THE COURT: Okay. Agent Santana, you may
19 step down. Thank you.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Ms. Fleck?

22 MS. FLECK: No other witnesses, your Honor.
23 The Government rests.

24 THE COURT: All right. Mr. Castillo,
25 anything from the Defendant?

1 MR. CASTILLO: If I could just make a
2 proffer on behalf of my client, your Honor.

3 THE COURT: Okay.

4 MR. CASTILLO: I would just proffer, your
5 Honor, that Mr. Brunson has been notified by his wife
6 that she is a -- she's still in their home, and that
7 she would be willing to be a designated individual to
8 watch over him. The child has been placed elsewhere
9 at this time. And I know that may be a concern of the
10 Court.

11 THE COURT: What's her name? Mrs. Brunson,
12 what's her name?

13 MR. CASTILLO: Ariel (phonetic) Brunson.

14 THE COURT: Ariel (phonetic) Brunson?

15 MR. CASTILLO: Yes, your Honor.

16 THE COURT: Okay. Go ahead.

17 MR. CASTILLO: And she has made it known to
18 us that she would be willing to -- to watch over him
19 in their residence, considering they've been residents
20 of Ector County for 30-plus years, I believe, or
21 pretty much their whole life, about 30 years.

22 THE COURT: Very good. Thank you,
23 Mr. Castillo.

24 Mr. Castillo, I was just going to tell you,
25 (inaudible; microphone) dismissing you on the -- on

1 the statute, I just -- I understood your question; I
2 guess I was actually dismissing the Government. But I
3 understood your question, and I -- I just wanted to
4 move on because I think -- I don't think it mattered
5 to the charge. So, I just...

6 MR. CASTILLO: And just -- It's just a
7 question, I guess, of interpretation of the statute,
8 your Honor.

9 THE COURT: I think so, too. I think so,
10 too, because the statute does allow -- does talk about
11 it. But I think the Government was right. And I
12 understood what you were asking. And I didn't think
13 it was going to matter, because Agent Santana didn't
14 have any evidence as to interstate or foreign
15 commerce. Correct?

16 (No audible response.)

17 THE COURT: All right.

18 MR. CASTILLO: Your Honor, again, I
19 apologize --

20 THE COURT: No.

21 MR. CASTILLO: -- for wasting the Court's
22 time with that.

23 THE COURT: No, no.

24 MR. CASTILLO: That's probably an issue
25 we'll bring up at a later time.

1 THE COURT: I would have asked the same
2 question, I think, if I were you. But I -- But I
3 don't think it -- At this point, I don't think it
4 matters. It may matter at some point.

5 MR. CASTILLO: I guess I'm -- Maybe I'm just
6 ruling that section out.

7 THE COURT: Okay. Yeah. Right. I see
8 what you're trying to do. Well, but things can
9 change, Mr. Castillo.

10 MR. CASTILLO: Thank you, your Honor.

11 THE COURT: Yes, sir. Thank you.

12 Ms. Fleck, any argument?

13 MS. FLECK: Yes, your Honor. I guess
14 we're -- we're here for a preliminary exam, as well as
15 a detention hearing. I'll just argue both at the same
16 time, if that's all right with your Honor.

17 I think there's clearly probable cause in this
18 case. Your Honor did point out, and Mr. Castillo
19 pointed out, the distinction in 2251 versus 2252
20 violations, and that. At this time, the computers are
21 still being forensically examined, and we don't know
22 whether or not we will find images having been
23 distributed via the Internet. However, under 2251,
24 production of child pornography, there is a -- sort
25 of a series of ways that we can use that interstate

1 commerce element. And I believe they are listed with
2 "or," as the conjunction. And one of those ways is
3 using materials that have been made and -- and shipped
4 in interstate commerce. And Agent Santana did testify
5 that all of the cameras and webcam that were seized
6 from Mr. Brunson's residence were not manufactured
7 within the State of Texas.

8 I think it's clear from her testimony that there
9 was production of child pornography made at that home
10 with that three-year-old child. Specifically, she
11 testified to one particular image in which there is
12 a male hand in the photograph being used to spread the
13 child's legs and show the genitalia to the camera.

14 If you look at Mr. Brunson's Pretrial Services
15 report, he admits that he lives there with his wife
16 and daughter, and no other individuals are listed.
17 Clearly, the hand in the photograph was described as a
18 male hand; thereby, through process of elimination,
19 making that Mr. Brunson's hand.

20 And considering that, in conjunction with the
21 evidence that was obtained from Canada, I don't think
22 that probable cause is an issue. And Judge Junell has
23 signed the complaint in this case, obviously
24 indicating that he believed there was probable cause,
25 as well.

1 With regards to detention, I would most
2 importantly argue that this is a case where there is
3 a presumption that he is a danger to the community,
4 and especially to children. I would argue that he be
5 detained for that reason.

6 I do think that there's a possibility that he's
7 a flight risk, given the fact that he'd be facing a
8 15-year minimum mandatory prison sentence. He has
9 some ties to Tennessee and Illinois, doesn't appear
10 that he has any ties out of state -- outside of the
11 country. But there's certainly a slight fear that
12 he would be a flight risk, given the severe prison
13 sentence that he is facing.

14 I think the more important concern is that he's
15 a danger to the community. Agent Santana testified
16 that there were some allegations in the early '90s
17 with another daughter of his. Those were dismissed,
18 and I can't tell the Court or Mr. Castillo at this
19 time any more information about that. I will look
20 into it, and I don't know if I'll be able to find out
21 any more about it.

22 But that does raise some concerns when he was
23 here with another daughter, this time a three-year-old
24 daughter, who's severely -- seems to be severely
25 under-cared for. She's running around at three years

1 old in a diaper, apparently full-time. She doesn't
2 have the proper language skills. When she's
3 interviewed by Harmony Home -- And I will proffer
4 to the Court and to Mr. Castillo that there was no
5 physical injury found on the child. However, the
6 conversation that was taking place with the man in
7 Canada is talking about getting this three-year-old
8 child to perform oral sex on him. Which, if that was
9 the case, if that had been going on, or was going to
10 go on, would not necessarily leave any physical damage
11 to the child. It would reinforce what happened when
12 she was interviewed by the interviewer at Harmony
13 Home, when she's presented with a picture, a drawing
14 of a man, and she immediately scratches out the crotch
15 area of the drawing, covers it up, and throws it
16 behind her. It's extremely disturbing.

17 I guess I would just rest on the fact that
18 this is a presumption, and there's been no evidence
19 submitted by the Defense to overcome that
20 presumption. And we'd ask that he be detained,
21 your Honor.

22 THE COURT: Mr. Castillo?

23 MR. CASTILLO: Thank you, your Honor.

24 As to the probable cause determination, your
25 Honor, I guess I'd just, one more time, ask the Court

1 to refer to the statute, which I am looking at,
2 2251(b), and understand there's several ways of
3 meeting that statute. I think they're separated by
4 "ifs," one of which, if that visual depiction was
5 produced using material that had been mailed, shipped
6 or transported in interstate or foreign commerce. And
7 I believe that's what Ms. Fleck said they were trying
8 to make the case on.

9 The images were found, okay, so you may say
10 there's probable cause to determine he's in possession
11 of the material. As to how they were produced,
12 whether there was a camera found there, I'm not sure
13 if they presented much evidence on whether it was
14 taken with that camera. I know there's some testimony
15 as to where the camera was obtained from. But there's
16 not that strong of a link. It seems like a tenuous
17 link, your Honor. Again, there may be probable cause
18 to determine possession here. But I believe the key
19 in most of these selections under the statute is
20 interstate commerce, which is what gives the statute
21 its power here.

22 THE COURT: So, you're saying, Mr. Castillo,
23 that it would have had to already have been
24 transported, transmitted in interstate or foreign
25 commerce, for it to be -- for a production?

1 MR. CASTILLO: No, your Honor.

2 THE COURT: Okay. Tell me.

3 MR. CASTILLO: I apologize if I got the --

4 THE COURT: No, no, no. I'm just asking.

5 MR. CASTILLO: Okay. The first clause where
6 it says, if such parent, legal guardian or person
7 knows or has reason to know that such visual depiction
8 will be transported, that's -- that's, I guess, the
9 first element that you could bring this under.

10 Ms. Fleck seemed to make it known to us and the
11 Court that that's not what they were trying to bring
12 this case under. It seemed to me that they were
13 trying to bring it under the second provision, which
14 is if that visual depiction was produced using
15 materials that have come from interstate commerce,
16 which I -- I think that's the second.

17 And, excuse me, it seemed like most of the
18 evidence was being focused on this chatroom, on, you
19 know, what has happened in the past in this
20 Defendant's life, the interview with the child. I
21 didn't hear much testimony of how these pictures were
22 created. There's talk about a camera that was found.
23 Again, it just seems like a tenuous link, your Honor,
24 if you're talking about a probable cause determination
25 here.

1 THE COURT: Just -- Just so you -- I just
2 want to make clear, just so you're not saying it has
3 to have already been transmitted --

4 MR. CASTILLO: No, your Honor, I'm not
5 saying that.

6 THE COURT: If it -- If there's -- If it
7 will be transmitted, or if there is an idea that there
8 would be transmission, then -- then that's really what
9 we're looking at; correct?

10 MR. CASTILLO: Correct.

11 THE COURT: Okay. All right.

12 MR. CASTILLO: I just wanted to make that
13 argument to the Court.

14 THE COURT: I understand your argument. And
15 I do -- I think you -- you make a good argument. I
16 just think that the statute -- I think the way the
17 Government is arguing the statute at this point -- And
18 I know all things probably will change after Grand
19 Jury. But, obviously, this is not to convict Mr. --

20 MR. CASTILLO: Sure.

21 THE COURT: -- Mr. Brunson, but to -- to
22 find that there is probable cause or not.

23 Go ahead. I'm sorry. I didn't mean to interrupt
24 you.

25 MR. CASTILLO: Okay. As to detention, your

1 Honor, we would submit to the Court, we understand the
2 gravity of this crime. We understand the possible
3 penalty here. But Section 3142 does state that if you
4 can find a condition or a combination of conditions
5 that would secure the Defendant's appearance in
6 court. We believe that there are certain conditions.

7 First of all, the Defendant, as stated in the
8 pretrial report, does have strong ties to this
9 community. He shows here he's been 25 years total in
10 the community. That's where his wife is. That's
11 where his family is. That's where his home is. As I
12 proffered to the Court, his wife was willing to be a
13 person who can -- a designated person which he can
14 remain in her custody during these proceedings, and
15 assure that he comes to court when he needs to, your
16 Honor.

17 If you -- I understand he does have a little
18 criminal history here on this pretrial report; nothing
19 really as to failing to appear in court, or any such
20 action of that nature, your Honor, not even an arrest
21 or a dismissal for that. So, we -- we do believe he
22 can appear in court, and there are some conditions.

23 Another condition that the Defendant would be
24 willing to abide by is maintaining employment. It
25 does show here that he was working, I believe, for

1 Permian Rod. And I would just proffer to the Court
2 again, your Honor, that he can obtain that job upon
3 release.

4 (Cough.) Excuse me.

5 Another condition that he would be willing to
6 abide by is if the Court wanted to put a monitoring --
7 a monitoring device on him, we would be willing to go
8 with a condition like that.

9 I'd just remind the Court that it's easier to
10 defend a case of this nature if the Defendant is on
11 release. Of course, that's true in any case, your
12 Honor, but I would just like to remind the Court of
13 that, also, for defense counsel, maybe, more than
14 anything.

15 But, again, we believe that he has strong ties to
16 this community. He has his family there. His wife is
17 willing to look out for him. He doesn't have that
18 lengthy of a criminal history. And we believe those
19 factors would allow him to -- to be released upon a
20 certain amount of conditions.

21 THE COURT: Is Mrs. Brunson here today?

22 MR. CASTILLO: She was, your Honor. But, I
23 mean, I would just, again, proffer to the Court that
24 she informed me before court that she was really,
25 really nervous, and she didn't want --

1 THE COURT: No, I just -- I just wondered if
2 she was here.

3 MR. CASTILLO: -- and didn't want to say
4 anything that would hurt herself.

5 THE COURT: I understand. With the crowd
6 here, I couldn't tell if she was or not, because I
7 don't know what she looks like.

8 Thank you.

9 MR. CASTILLO: Thank you, your Honor.

10 THE COURT: Thank you, Mr. Castillo.

11 Anything further, Ms. Fleck?

12 MS. FLECK: No, your Honor.

13 THE COURT: Okay. Mr. Brunson, if you'll
14 take the podium with Mr. Castillo.

15 I take judicial notice of the Pretrial Services
16 report and the complaint, along with the affidavit
17 supporting that complaint.

18 I find that -- You know, we've parsed through
19 the -- the statute a little bit today. I find that
20 probable cause does exist to believe that an offense
21 was committed in violation of 2251(b), and that you
22 are the person that committed that offense. So, I
23 find that probable cause exists to bind the case over
24 to the Grand Jury.

25 And, again, as I have alluded to several times

1 today, you know, I don't know what the indictment --
2 If an indictment ensues or is returned, I don't know
3 what that will look like, if it will -- if it will
4 reflect much of what you see in the complaint. But
5 whether it does, or if it adds other things, that will
6 be a whole different story. And the Grand Jury, you
7 know, may decide to no bill the case. But for now I
8 find probable cause exists.

9 As for detention, Mr. Brunson, you -- there is a
10 rebuttable presumption. I know -- I do not believe
11 that you have rebutted sufficiently the presumption
12 that tells me, by statute from Congress, that you are
13 a flight risk and a danger to the community.

14 There are lots of things that your attorney
15 has -- has brought to mind that are -- are very good.
16 And I -- I note that Mrs. Brunson was in the home when
17 these alleged -- some of these alleged acts were
18 taking place, and so I don't -- I don't find a whole
19 lot of comfort in Mrs. Brunson being able to -- to be
20 your custodian of any kind.

21 And I don't think electronic monitoring -- I
22 can't think of -- I like the fact that you have a job.
23 And those are tough to come by these days for a lot of
24 people, and I respect people that do that.

25 But I -- I don't think that -- I can't fashion,

1 in my mind, conditions, or even a combination of
2 conditions that would ensure that you are not a flight
3 risk and -- and that you are not -- that you are not a
4 danger to the community, that would ensure the safety
5 of the community.

6 You are facing, at this point, with the charge
7 that you now are under, I think 15 to 30 years in
8 prison. And -- And that is a lot of time.

9 I find that the evidence against you is
10 substantial, and that there is a likelihood of
11 conviction. And, so, I take that into consideration,
12 as well. And I think that makes a lot of difference
13 to me in trying to determine if we could fashion some
14 conditions to ensure your return, and the safety of
15 the community, and I cannot come up with that.

16 I also find that your criminal history -- I agree
17 with your attorney, your criminal history is not
18 atrocious, that I see. I see some things; I do see
19 that you had a probation revoked, which doesn't give
20 me any comfort, either.

21 So, I will order you detained pending the outcome
22 of the case.

23 And, Mr. Castillo, do you have anything further?

24 MR. CASTILLO: No, we don't, your Honor.

25 THE COURT: And, Ms. Fleck, anything from

1 the Government?

2 MS. FLECK: No, your Honor.

3 THE COURT: All right. Mr. Brunson, you
4 will be remanded to the custody of the marshals
5 pending the outcome of your case.

6 THE DEFENDANT: Yes, sir.

7 MR. CASTILLO: Thank you.

8

9 (Recess.)

10

11 *****

12

13

14 I, Court approved transcriber, certify that the
foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the
above-entitled matter.

16

17 /s/ Darla Messina June 29, 2010
Signature of Approved Transcriber Date

18

19 Darla Messina
20 Typed or Printed Name

21

22

23

24

25